



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

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November 5, 2004

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The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

**ORDINANCE ADDING CHAPTER 1.25 TO TITLE 1 OF THE LOS ANGELES
COUNTY CODE TO ESTABLISH ADMINISTRATIVE FINES AND
NONCOMPLIANCE FEES FOR VIOLATIONS OF THE COUNTY CODE
(All DISTRICTS / 3-VOTES)**

Dear Supervisors:

IT IS RECOMMENDED THAT THE BOARD AFTER THE PUBLIC HEARING:

1. Find that the proposed Ordinance, adding Chapter 1.25 to Title 1 of the County Code to make the violation of any provision of the code subject to an administrative fine and a noncompliance fee and to establish procedures for the imposition, enforcement, collection, and administrative review thereof, is exempt from the California Environmental Quality Act pursuant to section 15061(b)(3) of Title 14 of the California Code of Regulations (the State CEQA Guidelines).
2. Introduce, waive reading, and schedule the proposed Ordinance for adoption at the next regular meeting of your Board.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On June 1, 2004, your Board approved a motion by Supervisor Yaroslavsky that, among other things, directed the Chief Administrative Office (CAO) and the County Counsel to develop a proposal, including required ordinance amendments, for enhancement of the County's civil remedies which may be utilized to achieve compliance with the County Code ("code").

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The enclosed ordinance enhances the County's civil enforcement remedies by establishing two additional remedies/deterrents to code violations, an administrative fine, and a noncompliance fee. If the proposed ordinance is adopted, both these remedies could be imposed administratively by the enforcing departments, to enhance civil enforcement as an alternative to criminal prosecution.

Implementation of Strategic Plan Goals

This action is consistent with the County Strategic Plan Goal of Service Excellence, as the proposed ordinance would provide code enforcement officials with additional tools to utilize in gaining compliance with the various provisions of the County Code, thereby improving the effectiveness of the County's code enforcement program. This action is also consistent with the County Strategic Plan Goal of Fiscal Responsibility as the proposed Ordinance, if adopted, would provide additional revenue to defray the costs associated with the County's code enforcement activities.

FISCAL IMPACT/FINANCING

Revenue generated by the imposition of administrative fines and noncompliance fees would defray the costs of enforcement activities undertaken by each department, including responding to complaints, performing inspections, and issuing notices of violations.

If the proposed ordinance is adopted, the Board will subsequently be requested to separately determine the amount of each enforcing department's noncompliance fee, based on the reasonable costs incurred by the respective department in enforcing the provisions of the code within its scope of authority.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The establishment of administrative fines is authorized by Government Code section 53069.4, which provides as follows:

The legislative body of a local agency . . . may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the

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administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of section 25132 . . .

As required by section 53069.4, the ordinance provides a detailed procedure for the review of any administrative fine by a departmental hearing officer if requested by someone cited for a code violation. Under the proposed ordinance, the fines range from \$100 to \$1000 per separate violation, consistent with state law limits.

The establishment of the noncompliance fee is authorized by section 7 of Article 11 of the California Constitution, which establishes the County's general police power.

Pursuant to section 66018 of the Government Code, prior to adopting a new fee, the Board must hold a public hearing, at which oral or written presentations may be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting must be published for ten (10) days in a newspaper regularly published once a week or oftener.

ENVIRONMENTAL DOCUMENTATION

The adoption of the proposed ordinance is exempt from CEQA pursuant to section 15060(c)(2) of the State CEQA Guidelines because the adoption of the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment, and also pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of the ordinance will have a significant effect on the environment.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

No adverse impact.

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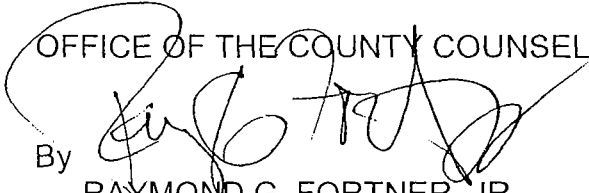
CONCLUSION

Please return one copy of the adopted letter and the Ordinance to the Office of the County Counsel.

Respectfully submitted,

OFFICE OF THE COUNTY COUNSEL

By


RAYMOND G. FORTNER, JR.
Chief Deputy County Counsel

RGF:MTY:ia

Enclosures

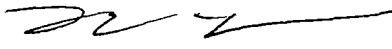
c: David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors

ANALYSIS

This ordinance adds Chapter 1.25 to Title 1 – General Provisions of the Los Angeles County Code to make the violation of any provision of the code subject to an administrative fine and a noncompliance fee and to establish the procedures for the imposition, enforcement, collection, and administrative review of said administrative fines and noncompliance fees.

OFFICE OF THE COUNTY COUNSEL

By 
MARK YANAI
Principal Deputy County Counsel
Public Works Division

MTY:ia

06/01/04 (Requested)

10/19/04 (Revised)

ORDINANCE NO. _____

An ordinance amending Title 1 – General Provisions of the Los Angeles County Code, to add Chapter 1.25, relating to the imposition of administrative fines and noncompliance fees for the violation of any provision of the code and the procedures for the imposition, enforcement, collection, and administrative review of said fines and fees.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 1.25 is hereby added to Title 1 – General Provisions to read as follows:

Chapter 1.25

ADMINISTRATIVE FINES AND NONCOMPLIANCE FEES

FOR CODE VIOLATIONS

Section 1.25.010 Purpose. The purpose of this chapter is to establish alternate remedies for code enforcement officials to utilize in enforcing the provisions of this code. The remedies authorized in this chapter are cumulative to any other remedy provided for in this code or the laws of the state of California, or the United States of America, and the administrative fines and noncompliance fees authorized in this chapter may be imposed in addition to any other fine, penalty, fee, charge, notice of violation, or any other remedy provided for in this code or the laws of the state of California, or the United States of America, so long as the cumulative application of such available remedies would not violate any applicable law.

Section 1.25.020 Definitions. Whenever used in this chapter, the following words and phrases shall be defined as set forth in this section.

A. Department head. Head of the issuing department or his or her duly appointed designee.

B. Enforcement officer. Any county employee or agent of the county delegated with the power to enforce any provision of this code.

C. Correction period. The period of time specified in a notice of violation within which the responsible person(s) must correct or otherwise remedy a continuing violation, or be subject to the issuance of a notice of administrative fine.

D. Hearing officer. The person appointed by the department head to conduct the administrative hearings provided for in this chapter. The hearing officer shall not be the enforcement officer that issued the notice of administrative fine or the notice of noncompliance fee that is the subject of the administrative hearing or the immediate supervisor of that enforcement officer.

E. Issuing department. The county department that issues a notice of violation and that has authority and responsibility for enforcing the code section that is the subject of the notice of violation.

F. Responsible person. A person responsible for, or alleged to be responsible for, a code violation. There may be more than one responsible person for a code violation. A responsible person may include any of the following:

1. A person who causes or materially contributes to the causation of the code violation;
2. A person who maintains or allows the code violation to continue by his or her action or inaction;
3. A person whose agent, employee, or independent contractor causes or materially contributes to the causation of the code violation;
4. For code violations pertaining to conditions of real property, a person who owns the real property, or any lessee or sublessee of the real property that has a current right to possess the real property; and,
5. An on-site manager of a business premises who is responsible for the activities at the premises.

For purposes of this section, the term "person" includes natural persons, corporations, unincorporated associations, estates, trusts, and any other legal entities, including the owners, majority stockholders, officers, general partners, joint venturers, members, executors, administrators, and trustees of any such legal entity.

Section 1.25.030 Notice of Violation.

A. Whenever an enforcement officer determines that a violation of a provision of this code has occurred, the enforcement officer is authorized to issue a notice of violation to the responsible person(s).

B. Except as provided in subsection C, below, the notice of violation may specify a correction period, if, in the judgment of the enforcement officer, a correction period is warranted.

C. When the violation constitutes a continuing violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues, that does not, in the reasonable judgment of the enforcement officer, create an immediate danger to health or safety, the notice of violation shall specify a correction period of not less than 30 days.

D. The enforcement officer may, in his or her discretion, grant a reasonable extension of any correction period specified in a notice of violation, if, in his or her judgment, an extension is warranted.

Section 1.25.040 Administrative Fines.

A. Each violation of any provision of this code and each separate offense designated by this code shall be subject to an administrative fine, as provided for in this chapter.

B. The amount of the administrative fine shall be determined by the enforcement officer, based on the nature and extent of the violation and the particular circumstances of the responsible person(s), subject to the following limitations:

1. If this code designates the violation as an infraction, the amount of the administrative fine shall not exceed the maximum amount provided for in

section 25132 of the California Government Code, for fines applicable to infractions;
and,

2. For all other violations of this code, the amount of the
administrative fine shall not exceed \$1,000.

Section 1.25.050 Imposition Of Administrative Fines.

A. Except as provided in subsection B, below, whenever an enforcement
officer issues a notice of violation, the enforcement officer is authorized to issue a
notice of administrative fine concurrently therewith, to the responsible person(s).

B. Where the notice of violation specifies a correction period, the
enforcement officer shall not issue a notice of administrative fine prior to the expiration
of the correction period or such extensions of the correction period as may have been
granted by the enforcement officer. If the violation has not been corrected or otherwise
remedied prior to the expiration of the correction period or any extensions thereof, the
enforcement officer may issue a notice of administrative fine to the responsible
person(s).

C. Each notice of administrative fine shall contain the following information:

1. A statement that an administrative fine is being imposed on the
responsible person(s) pursuant to this chapter of the code;
2. The name of the responsible person(s);
3. The code section violated;

4. The address where the code violation occurred (for violations pertaining to the condition of real property);
5. A description of the code violation;
6. The names of the issuing department and enforcement officer;
7. The amount of the fine for the code violation and the procedure to pay the fine; and,
8. The procedures for requesting an administrative hearing to contest the imposition of the administrative fine and for requesting a hardship waiver, pursuant to Section 1.25.080.

D. Unless a responsible person requests an administrative hearing to contest the imposition of the administrative fine, pursuant to Section 1.25.080, the notice of administrative fine shall constitute the final administrative order of the county with respect to said administrative fine, and the fine shall be due and payable by the responsible person(s) to the issuing department within ten (10) calendar days following service of the notice of administrative fine.

E. The enforcement officer shall serve a notice of administrative fine by either of the following methods:

1. By personal delivery to the responsible person(s); or,
2. By first class mail, postage prepaid to the responsible person(s) at the address shown on the county's last equalized property tax assessment rolls (if any), and the last known address of the responsible person(s) (if any), and, where the

underlying violation pertains to the condition of real property, by posting the notice in a conspicuous place on the real property.

Service under paragraph 1, above, shall be deemed effective at the time of personal delivery. Service under paragraph 2, above, shall be deemed effective five (5) calendar days following the date of mailing or, where the underlying violation pertains to the condition of real property, five (5) calendar days following the later of either the date of mailing or the date of posting.

F. Payment of an administrative fine shall not excuse the responsible person(s) from correcting the code violation, when required by the enforcement officer. The issuance of a notice of administrative fine and/or payment thereof does not preclude the enforcement officer from taking any other enforcement action in response to a code violation, including, but not limited to, issuing notices of noncompliance fees, as provided for in Sections 1.25.060 and 1.25.070, and/or making referrals to the district attorney for the filing of a criminal complaint or to the county counsel for the filing of a civil enforcement action.

Section 1.25.060 Noncompliance Fee.

A. The violation of any provision of this code shall be subject to a noncompliance fee, as provided for in this chapter.

B. The amount of the noncompliance fee shall be separately determined by the board of supervisors for each issuing department and shall not exceed the amount reasonably necessary to recover the cost incurred by each respective department in the

enforcement of the provisions of this code, including, but not limited to, responding to complaints, performing inspections, and issuing notices of violations.

Section 1.25.070 Imposition Of Noncompliance Fees.

A. Whenever an enforcement officer issues a notice of violation, the enforcement officer is authorized to issue a notice of noncompliance fee to the responsible person(s). The enforcement officer may issue the notice of noncompliance fee concurrently with the notice of violation, or in his or her discretion, may issue the notice of noncompliance fee upon the expiration of any correction period or extension thereof.

B. Each notice of noncompliance fee shall contain the following information:

1. A statement that a noncompliance fee is being imposed on the responsible person(s) pursuant to this chapter of the code;
2. The name of the responsible person(s);
3. The code section violated;
4. The address where the code violation occurred (for violations pertaining to the condition of real property);
5. A description of the code violation;
6. The names of the issuing department and enforcement officer;
7. The amount of the noncompliance fee and the procedure to pay the fee; and,

8. The procedures for requesting an administrative hearing to contest the imposition of the noncompliance fee and for requesting a hardship waiver, pursuant to Section 1.25.080.

C. Unless a responsible person requests an administrative hearing to contest the imposition of the noncompliance fee, pursuant to Section 1.25.080, the notice of noncompliance fee shall constitute the final administrative order of the county with respect to said noncompliance fee, and the fee shall be due and payable by the responsible person(s) to the issuing department within ten (10) calendar days following service of the notice of noncompliance fee.

D. The enforcement officer shall serve a notice of noncompliance fee in the same manner as required for service of a notice of administrative fine, as specified in Section 1.25.050.

E. Payment of a noncompliance fee shall not excuse the responsible person(s) from correcting the code violation. The issuance of a notice of noncompliance fee and/or payment thereof does not preclude the enforcement officer from taking any other enforcement action in response to a code violation, including, but not limited to, issuing notices of administrative fines and/or making referrals to the district attorney for the filing of a criminal complaint or to the county counsel for the filing of a civil enforcement action.

Section 1.25.080 Request For Administrative Hearing/Hardship Waiver.

A. Any responsible person served with a notice of administrative fine and/or a notice of noncompliance fee may request an administrative hearing before a hearing officer to contest the imposition and/or the amount of the administrative fine and/or the noncompliance fee. The request must be made in writing and be filed with the department head within ten (10) calendar days following service of the notice of administrative fine and/or the notice of noncompliance fee and shall include a statement indicating the basis on which the responsible person(s) contests the imposition of the administrative fine and/or the noncompliance fee, together with any evidence that the responsible person(s) wants the hearing officer to consider. The request shall also include the address of the responsible person(s) for the purpose of correspondence by the department head and/or hearing officer.

B. The written request for administrative hearing must be accompanied by a deposit equal to the full amount of the administrative fine as specified in the notice of administrative fine, and/or the full amount of the noncompliance fee as specified in the notice of noncompliance fee, unless the responsible person(s) requests a hardship waiver pursuant to subsection C, below. If no such waiver is requested, failure to deposit the amount of the fine and/or fee concurrently with the request for administrative hearing shall constitute a waiver of the responsible person's entitlement to the administrative hearing. The hearing request and fine and/or fee deposit shall be deemed filed on the date received by the department head.

C. A responsible person who requests an administrative hearing may also request a hardship waiver of the requirement to deposit the amount of the administrative fine and/or noncompliance fee prior to the administrative hearing. A hardship waiver request must be made in writing and filed with the department head and must be accompanied by a sworn affidavit, together with supporting documents or materials, demonstrating the responsible person's financial inability to deposit the amount of the administrative fine and/or noncompliance fee. A hardship waiver request must be filed at the same time as the request for an administrative hearing.

D. The department head shall review any hardship waiver request and determine, in his or her sole discretion, whether or not to grant any such request and shall provide written notice by first class mail, postage prepaid, of his or her determination to the responsible person(s) at the address contained in the request for administrative hearing. If a request for hardship waiver is granted, the responsible person(s) shall not be required to deposit the amount of the fine and/or fee prior to the administrative hearing. The granting of a hardship waiver shall not excuse the payment of the administrative fine and/or the noncompliance fee upon a final determination that it is owed. If a request for hardship waiver is denied, the responsible person(s) shall deposit the amount of the administrative fine and/or the amount of the noncompliance fee with the issuing department within ten (10) calendar days following the date of the

notice of the department head's determination. Failure to make a timely deposit following the department head's denial of a hardship waiver request shall constitute a waiver of the responsible person's entitlement to an administrative hearing.

E. After receiving a timely hearing request and deposit or having acted on a timely request for a hardship waiver, pursuant to subsection D of this section, with respect to such deposit, the department head shall schedule an administrative hearing. The responsible person(s) shall be given not less than ten (10) calendar days' prior written notice by first class mail, postage prepaid, of the date, time, and place of the administrative hearing and the name of the hearing officer that will conduct the administrative hearing.

Section 1.25.090 Administrative Hearing Procedures.

A. Hearings shall be conducted by the hearing officer on the date, time, and place specified in the notice provided for in Section 1.25.080. The hearing officer may, in his or her discretion, grant a continuance of the hearing date upon a request and a showing of good cause by the responsible person(s) or enforcement officer. The request must be made in writing and be received by the hearing officer at least two (2) business days prior to the hearing date. A copy of the continuance request must also be personally served on the enforcement officer if made by the responsible person(s), and on the responsible person(s) if made by the enforcement officer. In no event shall the continuance be longer than forty-five (45) calendar days from the originally scheduled hearing date.

B. At the hearing, the responsible person(s) shall have the opportunity to present evidence relevant to the hearing officer's determination of the matter. The failure of the responsible person(s) to appear at the administrative hearing shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies to judicially challenge the imposition of the administrative fine and/or the imposition of the noncompliance fee. If the administrative hearing is abandoned, the issuing department shall keep the funds deposited with the hearing request, unless a hardship waiver was granted, in which case the administrative fine and/or the noncompliance fee shall be due and payable by the responsible person(s) to the issuing department within ten (10) calendar days following the date that had been set for the administrative hearing.

C. The notice of violation, notice of administrative fine, and/or notice of noncompliance fee, and any other reports prepared by or for the enforcement officer concerning the code violation, shall be accepted by the hearing officer as prima facie evidence of the code violation and the facts stated in those documents. The enforcement officer may attend the hearing but is not required to do so. Once begun, the hearing officer may continue the hearing from time to time, in his or her sole discretion, to allow for the orderly completion thereof.

D. After receiving all of the evidence submitted at the hearing, the hearing officer may further continue the hearing and request additional information

from either the enforcement officer or the responsible person(s), or may close the hearing.

E. After considering all the evidence and testimony submitted at the hearing and within ten (10) calendar days after the close of the hearing, the hearing officer shall issue a written decision to either confirm or cancel the administrative fine and/or the noncompliance fee or to reduce the amount of the administrative fine and/or noncompliance fee. The written decision shall include a statement of the reasons for the decision. The written decision shall be served by first-class mail, postage prepaid on the responsible person(s) and the enforcement officer. The hearing officer's written decision shall constitute the final administrative decision of the county.

F. If the hearing officer confirms the imposition of the full amount of the administrative fine and/or the noncompliance fee, the department head shall keep the funds deposited with the hearing request, unless a hardship waiver was granted. If a hardship waiver was granted, the responsible person(s) shall pay the administrative fine and/or the noncompliance fee to the department head within twenty (20) calendar days following the date of the hearing officer's written decision.

G. If the hearing officer reduces the administrative fine and/or the noncompliance fee, the department head shall refund the appropriate amount of the funds deposited with the hearing request to the responsible person(s) within twenty (20) calendar days from the date of the written decision, unless a hardship waiver was granted, in which case the responsible person(s) shall pay the reduced amount(s) to the

department head within twenty (20) calendar days following the date of the hearing officer's written decision.

H. If the hearing officer cancels the administrative fine and/or the noncompliance fee, the department head shall refund the entire amount of the funds deposited with the hearing request to the responsible person(s) within twenty (20) calendar days from the date of the written decision, unless a hardship waiver was granted, in which case no further action is necessary.

Section 1.25.100 Right to Judicial Review Of Final Administrative Decision To Impose Administrative Fines.

A. A responsible person(s) may seek judicial review of the hearing officer's written decision pertaining to the imposition of an administrative fine by filing an appeal with the superior court in accordance with the time periods, procedures, and other requirements set forth in section 53069.4 of the California Government Code.

B. If no appeal of the hearing officer's written decision is filed within the time period set forth in section 53069.4 of the California Government Code, the hearing officer's decision shall be deemed confirmed.

Section 1.25.110 Creation Of Lien For Unpaid Administrative Fines.

A. In addition to any other remedy provided by law, if an administrative fine is not paid within the time period provided for in this chapter, and the underlying violation pertains to the condition of real property owned in whole or in part by the responsible person(s), the amount of the unpaid administrative fine shall become a lien on that real

property and the department head may enforce and collect the unpaid administrative fine by recording a notice of lien against that real property in the office of the registrar-recorder/county clerk.

B. When a notice of lien has been recorded, and the full amount of the corresponding administrative fine is subsequently paid to the department head, the department head shall promptly record a notice of satisfaction of lien. Upon recordation of the notice of satisfaction of lien, the lien shall be cancelled.

[125MYCOC]